

AMENDED IN ASSEMBLY APRIL 18, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2272

Introduced by Assembly Member Parra

February 22, 2006

An act to amend Section 1475 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2272, as amended, Parra. Writ of habeas corpus: Notice to prosecuting agency.

Existing law requires a person held in custody who is applying for a writ of habeas corpus to give 24 hour notice of the application to the district attorney of the county wherein the person is held in custody.

This bill would require the district attorney of the county wherein the person is held in custody to give the district attorney of the county in which the offense was prosecuted notice within 2 days of the issuance of an order to show cause and an order making the writ returnable if the writ arises out of a parole decision by the Board of Parole Hearings.

This bill would *also* require a person applying for a writ of habeas corpus because of a decision by the Board of Parol Hearings to give ~~72-hour~~ notice of the application to the district attorney of the county in which the offense was prosecuted *3 days before the time at which the writ is made returnable. This bill would allow the service to be made by mail.*

Because this bill would impose additional duties on local agencies, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1475 of the Penal Code is amended to
2 read:

3 1475. The writ of habeas corpus may be granted in the
4 manner provided by law. If the writ has been granted by any
5 court or a judge thereof and after the hearing thereof the prisoner
6 has been remanded, he *or she* shall not be discharged from
7 custody by the same or any other court of like general
8 jurisdiction, or by a judge of the same or any other court of like
9 general jurisdiction, unless upon some ground not existing in fact
10 at the issuing of the prior writ. Should the prisoner desire to urge
11 some point of law not raised in the petition for or at the hearing
12 upon the return of the prior writ, then, in case-~~such~~ *the* prior writ
13 had been returned or returnable before a superior court or a judge
14 thereof, no writ can be issued upon a second or other application
15 except by the appropriate court of appeal or some judge thereof,
16 or by the Supreme Court or some judge thereof, and in-~~such an~~
17 ~~event-such~~ *the event the* writ must not be made returnable before
18 any superior court or any judge thereof. In the event, however,
19 that the prior writ was returned or made returnable before a court
20 of appeal or any judge thereof, no writ can be issued upon a
21 second or other application except by the Supreme Court or some
22 judge thereof, and-~~such~~ *the* writ must be made returnable before
23 said Supreme Court or some judge thereof.

24 Every application for a writ of habeas corpus must be verified,
25 and shall state whether any prior application or applications have
26 been made for a writ in regard to the same detention or restraint
27 complained of in the application, and if any-~~such~~ prior

1 application or applications have been made the later application
2 must contain a brief statement of all proceedings had therein, or
3 in any of them, to and including the final order or orders made
4 therein, or in any of them, on appeal or otherwise.

5 Whenever the person applying for a writ of habeas corpus is
6 held in custody or restraint by any officer of any court of this
7 state or any political subdivision thereof, or by any peace officer
8 of this state, or any political subdivision thereof, a copy of the
9 application for ~~such~~ *the* writ must in all cases be served upon the
10 district attorney of the county wherein ~~such~~ *the* person is held in
11 custody or restraint at least 24 hours before the time at which
12 said writ is made returnable and no application for ~~such~~ *the* writ
13 can be heard without proof of ~~such~~ service in cases where ~~such~~
14 *the* service is required.

15 *If the person is applying for a writ of habeas corpus because of*
16 *a parole decision made by the Board of Parole Hearings and the*
17 *court issues an order to show cause and the writ is made*
18 *returnable, the district attorney of the county wherein the person*
19 *applying for the writ is in custody shall, within two business*
20 *days, notify the district attorney of the county in which the*
21 *offense was prosecuted that the court has issued an order to*
22 *show cause and the time and place of the hearing on the order to*
23 *show cause and return.*

24 If ~~such~~ *the* person is in custody for violation of an ordinance of
25 a city which has a city attorney, a copy of the application for the
26 writ must also be served on the city attorney of the city whose
27 ordinance is the basis for the charge at least 24 hours before the
28 time at which the writ is made returnable, provided that failure to
29 serve ~~such~~ *the* city attorney shall not deprive the court of
30 jurisdiction to hear the application.

31 If the person is applying for a writ of habeas corpus because of
32 a parole decision made by the Board of Parole Hearings, a copy
33 of the application for the writ shall also be served on the district
34 attorney of the county in which the offense was prosecuted ~~at~~
35 ~~least 72 hours~~ *three business days* before the time at which the
36 writ is made returnable and no application for the writ can be
37 heard without proof of the service in cases where the service is
38 required. *Service of a copy of the application for the writ of*
39 *habeas corpus on the district attorney in the county in which the*
40 *offense was prosecuted may be by mail.*

1 *SEC. 2. If the Commission on State Mandates determines that*
2 *this act contains costs mandated by the state, reimbursement to*
3 *local agencies and school districts for those costs shall be made*
4 *pursuant to Part 7 (commencing with Section 17500) of Division*
5 *4 of Title 2 of the Government Code.*

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